

In the Matter of Merchant Mariner's Document No. Z-960713 and all
other Seaman Documents

Issued to: Jerome S. Novak

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1399

Jerome S. Novak

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 16 October 1957, an Examiner of the United States Coast Guard at Seattle, Washington suspended Appellant's seaman documents for twelve months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as an Oiler on the USNS MISSION SAN GABRIEL under authority of the document above described, Appellant left his watch without proper relief, failed to perform his duties on several occasions, and failed to join the vessel. The alleged offenses occurred during a period of time beginning on 11 August 1957 and ending on 25 August 1957.

The hearing was conducted in absentia on 16 October 1957 and the Examiner's decision was not served on Appellant until 31 December 1962.

FINDINGS OF FACT

On 18 August 1957 Appellant was in the service of the USNS MISSION SAN GABRIEL in the capacity of oiler and acting under the authority of his document while the vessel lay in the port of Naha, Okinawa. On that day Appellant failed to stand his watch which started at 0400 and failed to join the vessel on its departure from Naha, Okinawa at 0800.

OPINION

Service of the summons and charge was accomplished on 11 October 1957 in Seattle, Washington. The hearing was set for 15 October 1957 and conducted in absentia on 16 October 1957 when Appellant failed to appear on either date. The Examiner found the specifications proved based on certified copies of Official Logbook entries submitted in evidence by the Government. The decision was mailed to Appellant's best known address by certified mail, but was

returned marked "unclaimed". On 31 December 1962, approximately five years following the rendition of the Examiner's decision, Appellant was served with the decision in San Francisco and his document was surrendered to Coast Guard officials. On appeal Appellant submitted a letter pleading for clemency.

Although the Coast Guard has a duty to serve Appellant with the decision, Appellant has an affirmative obligation to advise the Government of his whereabouts in order to assure the proper delivery of the Examiner's decision. Commandant's Appeal Decision Nos. 1033, 1038 and 1263. In the instant case the Examiner sent his decision to Appellant's best known address without success. Appellant, although apprised of the proceedings against his document, did not notify either the proper Coast Guard officials or the Hearing Examiner of a change in his address, nor did he leave a forwarding address. The long delay, therefore, in effectuating service of the decision on Appellant was at least partially due to his own failure to advise the Government of his whereabouts and can be stated to be the result of his own negligence. Commandant's Appeal Decision No. 1038.

In his plea for clemency Appellant states that a death in his family necessitated his absence from the hearing in Seattle. It is noted that Appellant was served with the charge on 11 October 1957, five days prior to the hearing. Service was acknowledged by Appellant's signature on the back of the charge sheet. Since Appellant, by his own admission, knew of the death in his family prior to service of process, he should have, in order to avoid a decision in his absence, informed the Investigating Officer and requested a change of venue or a postponement of the hearing. The record indicates that Appellant did neither.

It is noted that certain entries from the Official Logbook of the USNS MISSION SAN GABRIEL, upon which the specifications are based, are not in substantial compliance with the requirements of Title 46, section 702 of the U. S. Code. The entries, related to the specifications charging Appellant with leaving his watch on 11 August 1957 without being properly relieved and failing to perform his duties on 14, 15 and 16 August 1957, do not indicate that Appellant, although apparently on board, was furnished with a copy of the entries and given an opportunity to answer them. In addition to similar omissions as above, the entry charging Appellant with refusal to return to the ship and resume his duties on 24 August 1957 is signed only by the Master and not witnessed by another crew member as required by the statute. The entry stating that Appellant failed to perform his duties on 25 August 1957, when he returned on board for a few minutes, was neither signed by the Master nor another crew member. Since the above mentioned specifications do not meet the requirements of section 702, they

are dismissed.

The only logbook entry which is adequate to make out a prima facie case is the entry which supports the allegations that Appellant failed to perform his duties on 18 August 1957 and failed to join his vessel on the same date. Although there is no indication that Appellant was informed of this entry, the excerpts from the Shipping Articles which were introduced in evidence confirm the fact that Appellant failed to join. Therefore, he was not on board on or after 18 August (except for the few minutes on 25 August) to be apprised of this logbook entry. Under circumstances where the seaman does not remain on the vessel, it is not necessary to furnish the seaman with a copy of the entry and to give him an opportunity to answer it. These provisions apply only if the offender is "still in the vessel" (46 U. S. Code 702). Consequently, the logbook entry substantially complies with the statute with respect to these two offenses and the conclusion that they were proved is upheld.

ORDER

In view of the Government's failure to carry its burden of proof in all but two specifications, the order of the Examiner dated at Seattle, Washington on 16 October 1957, is modified to provide for a suspension of three months outright.

As so MODIFIED, the said order is AFFIRMED.

E. J. ROLAND
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 26th day of June 1963.